IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.800/2006

Decided on. 5.7.2007

Mohinder Prakash. …Petitioner.

Versus

State of H.P. and others. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1].

For the petitioner : **Mr. Ajay Sharma, Advocate.**

For the respondents **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals.**

Rajiv Sharma, J.

A challenge has been laid through the present petition to the award dated 30.6.2006 passed by the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala, District Kangra, H.P. in reference No. 381/2002.

The brief facts necessary for the adjudication of this petition are that after the conciliation proceedings failed, the State Government had made the following referenced to the Labour Court, Dharamshala:

> **"Whether the termination of service of Sh. Mohinder Prakash S/o Sh. Uttam Chand daily wages beldar by the Conservator of Forest Circle, Dharamshala, District Kangra, 2. The Divisional Forest Officer, Forest Division, Nurpur, Distt. Kangra, H.P. w.e.f. year, 1992 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority, service benefits and**

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?

amount of compensation the aggrieved workman is entitled to?

The petitioner (hereinafter referred to as the workman for the convenience sake) had filed statement of claim in sequel to the reference made by the State Government. Primarily the workman had stated in his statement of claim that he was engaged as Chowkidar on daily wages with effect from 1981 to 1992 and was retrenched without following the due procedure. The employer had filed the reply to the statement of claim and had admitted in the reply that the workman was engaged as casual labourer and worked for more than 240 days from 1987 to 1992 with the Social Forestry Range under the Umbrella Project. The Labour Court had answered the reference in negative on 30.6.2006.

Mr. Ajay Sharma, Advocate appearing on behalf of the petitioner had urged that the workman had worked uninterruptedly with effect from 1987 to 1993 and had also approached the H.P. State Administrative Tribunal by way of O.A. No. 1959/91 and the H.P. State Administrative Tribunal vide order dated 9.9.1996 directed the respondents to consider the case of the workman with others for regularization. He then contended that despite the orders passed by the H.P. State Administrative Tribunal, the services of the workman were not regularized though the others who had filed the original application with the workman were regularized. He also contended that the mandatory notice as per section 25 of the Industrial Disputes Act, 1947 was not issued to the workman nor he was paid any compensation in lieu thereof.

The learned Advocate General had supported the award dated 30.6.2006 passed by the Labour Court.

I have heard the parties and perused the record.

The workman was engaged in the year 1981 and as per the reply filed by the employer to the statement of claim he had worked upto April,

1993 in Social Forestry Umbrella Project. The contention of the workman that he was retrenched without following the due process of law has not been denied by the respondents either before this Court or before the Labour Court. The only ground mentioned in the reply to the statement of claim filed by the workman was that the workman was dis-engaged in April, 1993 due to stoppage of funds by the funding agency. The workman had also approached the H.P. State Administrative Tribunal by way of O.A. No. 1959/1991 which was decided on 9.9.1996 but despite that the workman was not regularized though similarly situate workmen as per averment made in the petition were regularized.

Mr. Ajay Sharma, Advocate had contended that the workman issued the demand notice to the employer pursuant to which the conciliation proceedings had taken place and after the failure report of the Conciliation Officer, the reference was made by the State Government in the year 2002.

This Court has to consider whether there was an inordinate delay in raising the industrial dispute by the workman or not and if there was any delay, could it be taken care of at the time of granting relief by the Labour Court. The workman had worked from the year 1981 to April, 1983 and had approached the H.P. State Administrative Tribunal in the year 1991. The H.P. State Administrative Tribunal had decided the original application on 9.9.1996. The workman had raised the demand which had led to the conciliation proceedings and failure report. As far as delay from 1993 to 1996 is concerned, the H.P. State Administrative Tribunal was seized of the matter in O.A. No. 1959/1991. The Court can take judicial notice of the fact that it takes about 1-2 years for completing the process for raising the demand, conciliation proceedings and failure report and ultimately making of reference by the State. Accordingly, at the most there was a

delay of only four years in raising the dispute which could have been taken into consideration at the time of granting the relief by the Labour Court instead of rejecting the claim of the workman on delay and laches.

The Hon'ble Supreme Court in ***Ajaib Singh versus Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another,*** (1999) 6 SCC 82 has held that the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the Industrial Disputes Act. The Hon'ble Supreme Court has further held that it is not the function of the Court to prescribe limitation where the legislature in its wisdom had though it fit not to proscribe any period. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the work man till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana is also of no help to him. In that case the High Court nowhere held that the provisions of Article of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided not any**

guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that

> **"reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay".**

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had though it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court cannot be stretched to authorize them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purpose of invoking the jurisdiction of the courts/boards and tribunals under the Act."

The Hon'ble Supreme Court in ***Mahavir Singh Versus U.P. State Electricity Board and Others, (1999) 9 SCC 178*** has held as under:-

> **"In our view, the order passed by the High Court cannot be sustained. The services of the appellant Chowkidar were terminated by Respondent 1, the Board. The date of termination is 12-11-1976. He raised an industrial dispute though belatedly in March, 1983. Ultimately reference was made by the appropriate**

Government on 17-4-1984. The Labour Court adjudicated the reference and took the view that the termination was illegal. But considering the delay in raising the dispute, as a package 50% back wages were directed to be granted to the appellant till reinstatement. Respondent 1 carried the matter in appeal before the High Court under Article 226 of the Constitution of India. The High Court took the view that as the dispute was raised belatedly, the reference itself was incompetent though agreeing with the Labour Court that on merits the termination order could not be sustained and it was illegal. It is this order of the High Court which is in challenge before us.

Once the termination is held to be illegal, we fail to appreciate how the entire reference could have been rejected. The dispute lingered on for a number of years. That would not mean that the dispute had ceased to exist. It is, of course, true that belatedly the dispute was raised but that has been taken care of by the Labour Court by not awarding full back wages but only 50% of the back wages all throughout from the date of termination till reinstatement. Such order as passed by the Labour Court could not be said to be in any way uncalled for and illegal."

The Hon'ble Supreme Court has further held in ***Sapan Kumar Pandit Versus U.P. State Electricity Board and Others*, (2001) 6 SCC 222** that the opinion as to the existence of the dispute has to be formed by the Government alone and none else. Their Lordships of the Hon'ble Supreme Court have held as under:-

"The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time-limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindle by making a reference of it to adjudication? The words "at any

time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this sub-section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or it apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complementary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government, it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which elapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed (sic) on the possibility of what another party would think, whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make a reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference, there is a presumption that in the opinion of the Government, there existed such a dispute."

The Hon'ble Supreme Court has held in ***U.P. State Electricity Board Versus Rajesh Kumar*, (2003) 12 SCC 548** that facts and circumstances of each are to be considered in dealing with the claims and appropriate reliefs to be granted. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"Per contra, the learned counsel for the respondent workman in his arguments supported the impugned judgment. He submitted that the position of law, as regards making a reference of a dispute, is well settled by the decisions of this Court. According to the learned counsel, merely because there was delay in raising the dispute, reference itself was not incompetent; it is for the appropriate Government to make a reference on being satisfied as to the existence of the dispute; assuming that there is a delay in raising the dispute, that itself is not a ground to deny the relief to the workmen, but, depending on the facts and circumstances, the relief could be moulded. He added that this plea that the reference was not competent after delay of 19 years, was not raised before the Labour Court at all; for the first time it was urged before the high Court. He also pointed out that the appellant being in possession of the original document, nothing prevented it from placing it before the Labour Court, if the list produced by the workmen was not correct or names of workmen in the list of employees were not found. He also submitted that the appellant having sought time, failed to produce evidence, as is evident from the orders of the Labour Court. Under the circumstances, according to the learned counsel no fault can be found with the impugned judgment.**
>
> **The Labour Court, on the basis of the evidence on record, has recorded a finding of fact that the respondent workmen did work for 240 days. This conclusion is based on the evidence of the workmen and the list of 82 employees, which included the names of the respondent workmen. It is also on record that the correctness of this**

list was not challenged before the Labour Court and the management did not produce any contra-evidence or the original records which it possessed to deny the claim or contention of the workmen. Non-consideration of the evidence of the Executive Engineer who was examined on behalf of the appellant, in our view, did not affect the case in any way for the simple reason that he was not in service on the relevant date i.e. the dates on which the services of the respondent workmen were terminated. It is also clear from the impugned judgment that the point with regard to the stale claim of the workmen was not raised before the Labour Court. For the first time it was sought to be urged before the High Court. We may also add that if the appellant was really aggrieved and serious as to the stale claim of the respondent workmen, it was open to the appellant management to question the very reference made by the State Government in the year 1997 itself. The validity of the reference was not questioned. Thereafter, the management participated in the proceedings before the Labour Court and suffered the award. The management further, unsuccessfully, challenged the award of the Labour Court before the High Court. From the award of the Labour Court it is clear that the relief granted to the workmen was only with regard to the reinstatement with continuity of service. The back wages were awarded only from the date of reference and not from the dates of termination of their services. This is how the Court has moulded the relief. We are told that when the proceedings were pending in the High Court, the respondent workmen are already reinstated.

It is also not disputed by the learned counsel for the parties that there is no period of limitation as is prescribed for the parties in making the reference. The facts and circumstances of each case are to be considered in dealing with the stale claims and appropriate reliefs are to be granted. We do not think it is necessary for us to examine the question of stale claims made by the learned counsel for the appellant in these cases, in the light of the facts

narrated above and particularly, when the appellant did not challenge the order of reference made in the year 1997, at this stage. Thus looking from all angles, substantial justice is done in the matter. In this view, we decline to interfere with the impugned judgment. Consequently, the appeals are dismissed. No costs."

Similarly, the Hon'ble Supreme Court has held in ***Shahaji Versus Executive Engineer, PWD,*** **(2005) 12 SCC 141** that even if there is delay, the Labour Court can always mould the relief to be granted to the workmen. The Hon'ble Supreme Court has further held that the burden to raise plea of delay is on the employer. In this judgment, the Hon'ble Supreme Court has noticed the earlier judgment rendered in ***Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society*****, (1999) 6 SCC 82.** Their Lordships have held as under:-

"We have heard counsel for the parties and we have also been taken through the judgments of this Court reported in Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society, Nedungadi Bank Ltd. v. K.P. Madhavankutty and Sapan Kumar Pandit v. U.P. SEB. Having gone through the judgments we have no doubt that the judgment of this Court in Ajaib Singh case lays down the law correctly. In the instant case there was no ground of delay urged by the management. Moreover, even if there was delay in making the reference to the Labour Court, if it came to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted or curtailed. In Nedungadi Bank case what was challenged before the High Court was the order making the reference. That was not a case where the Labour Court refused to entertain the dispute on the ground of delay. Having regard to the clear position in law we are left with no option but to allow this

appeal and set aside the judgment and order of the High Court."

Their Lordships of the Hon'ble Supreme Court in latest judgment in ***Asstt. Engineer, CAD, Kota Versus Dhan Kunwar, (2006) 5 SCC 481*** has held that so far as delay in seeking the reference is concerned, no formula or universal application can be laid and it would depend on the facts of each individual case.

The Apex Court in ***State of Punjab v. Anil Kumar***, JT 2007 (7) SC 559 has upheld the award passed by the Labour Court though the workman had approached the Labour Court after 13 years but back wages as directed by the Labour Court and affirmed by the High Court were modified. Their Lordships have held as under:

"Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.

In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.

At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.

In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified."

The upshot of the above discussion is that there was no inordinate delay in raising the dispute by the workman. The Labour Court was required to adjudicate upon the reference on its merits instead of rejecting the claim on the question of delay and laches. The Labour Court could

have considered the question of delay and laches at the time of granting relief.

Accordingly the writ petition is allowed. The award dated 30.6.2006 passed by the Labour Court, Dharamshala is quashed and set aside. The Labour Court, Dharamshala is directed to decide the reference bearing No. 381/2002 afresh within a period of 3 months from today. There shall be no order as to costs.

(Rajiv Sharma), Judge

5.7.2007
Awasthi